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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TROUP LONDON MUSIC, WB MUSIC  
CORP., DUBOSE & DOROTHY HEYWARD  
MEMORIAL FUND PUBLISHING, GEORGE  
GERSHWIN MUSIC, IRA GERSHWIN MUSIC  
AND EMI MILLS MUSIC, INC.,

No.

07

3704

Plaintiffs,

COMPLAINT

JL

v.

ANNA DELEON,

Defendants.

Plaintiffs, complaining of the Defendant, by HELLER EHRMAN LLP, their attorneys, allege:

1. This is a suit for copyright infringement under Title 17, U.S.C. Jurisdiction of this Court is based upon Title 28, U.S.C., Section 1338(a).

2. Plaintiffs allege four (4) causes of action for copyright infringement based on the Defendant's public performances of copyrighted musical compositions. SCHEDULE A annexed to the Complaint sets forth in summary form the allegations hereinafter made with respect to the Plaintiffs, their copyrighted musical compositions, and Defendant's acts of infringement.

1           3.       Plaintiffs named in Column 2 (all references to columns are to columns in  
2 SCHEDULE A) are the owners of the copyrights in the works listed in Column 3, and are  
3 properly joined in this complaint under Rule 20, Fed. R. Civ. P.

4           4.       Defendant Anna DeLeon is a resident of this District and, at the times  
5 hereinafter mentioned did and still does own, control, manage, operate and maintain a place  
6 of business for public entertainment, accommodation, amusement and refreshment known  
7 as Anna's Jazz Island (a/k/a Anna's), located at 2120 Allston Way, in Berkeley, in the State  
8 of California. The acts hereinafter complained of were done with her active assistance,  
9 cooperation, acquiescence and procurement, and she derives financial benefit therefrom.

10          5.       Musical compositions were and are publicly performed at said place of  
11 business.

12          6.       The original musical compositions listed in Column 3 were created and  
13 written by the persons named in Column 4.

14          7.       Each composition was published on the date stated in Column 5, and since the  
15 date of publication has been printed and published in strict conformity with Title 17, U.S.C.

16          8.       The Plaintiffs named in each cause of action, including their predecessors in  
17 interest, if any, complied in all respects with Title 17, U.S.C., and secured the exclusive  
18 rights and privileges in and to the copyright of each composition listed in Column 3, and  
19 received from the Register of Copyrights a Certificate of Registration, identified as set forth  
20 in Column 6.

21          9.       All of the compositions are now in the renewal term of copyright, secured by  
22 due filing of an application for renewal of copyright in the office of the Register of  
23 Copyrights. The Register of Copyrights thereupon issued Certificates of Registration of the  
24 respective claims to the renewal of copyrights in the names of those claimants listed in  
25 Column 7. The dates and identification numbers of such certificates are set forth in  
26 Column 8.

27          10.       Defendant on the date specified in Column 9, and upon information and  
28 belief, at other times prior and subsequent thereto, infringed the copyright in each

1 composition named in Column 3 by giving public performances of the compositions on  
2 Defendant's premises, for the entertainment and amusement of the patrons attending said  
3 premises, and Defendant threatens to continue such infringing performances.

4 11. The performances of the Plaintiffs' copyrighted musical compositions on the  
5 dates specified in Column 9 on Defendant's premises were unauthorized: neither Defendant,  
6 nor any of the Defendant's agents, servants or employees, nor any performer was licensed  
7 by, or otherwise received permission from any Plaintiff or any agent, servant or employee  
8 of any Plaintiff to give such performances.

9 12. In undertaking the conduct complained of in this action, Defendant knowingly  
10 and intentionally violated Plaintiffs' rights. Defendant's knowledge and intent are  
11 established by the following facts:

12 (a) Defendant has not sought or obtained a license agreement from  
13 Plaintiffs or the American Society of Composers, Authors and Publishers (ASCAP), a  
14 performing rights licensing organization of which all Plaintiffs are members.

15 (b) Despite numerous letters and other contacts by ASCAP representatives  
16 informing the Defendant of their liability under the United States Copyright Law,  
17 Defendant has continued to perform copyrighted music without permission during the hours  
18 that Defendant's establishment is open to the public for business and presenting musical  
19 entertainment.

20 (c) The many unauthorized performances at Anna's Jazz Island (a/k/a  
21 Anna's) include the performances of the four copyrighted musical compositions upon which  
22 this action is based.

23 13. At the times of the acts of infringement complained of, the Plaintiff named in  
24 each cause of action was the owner of the copyright in the composition therein named.

25 14. The said wrongful acts of the Defendant have caused and are causing great  
26 injury to the Plaintiffs, which damage cannot be accurately computed, and unless this Court  
27 restrains the Defendant from the further commission of said acts, said Plaintiffs will suffer  
28

1 irreparable injury, for all of which the said Plaintiffs are without any adequate remedy at  
2 law.

3 WHEREFORE, Plaintiffs pray:

4 I. That Defendant and all persons acting under the direction, control, permission  
5 or authority of Defendant be enjoined and restrained permanently from publicly performing  
6 the aforementioned compositions or any of them and from causing or permitting the said  
7 compositions to be publicly performed in Defendant's said premises, or in any place owned,  
8 controlled or conducted by Defendant, and from aiding or abetting the public performance  
9 of such compositions in any such place or otherwise.

10 II. That Defendant be decreed to pay such statutory damages as to the Court shall  
11 appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty Thousand  
12 Dollars (\$30,000) nor less than Seven Hundred And Fifty Dollars (\$750) in each cause of  
13 action herein.

14 III. That Defendant be decreed to pay the costs of this action and that a reasonable  
15 attorney's fee be allowed as part of the costs.

16 IV. For such other and further relief as may be just and equitable.

17  
18 July 18, 2007

Respectfully submitted,

19  
20 HELLER EHRMAN LLP

21  
22 By 

23 Stephen V. Bomse  
24 Catherine P. Rosen  
25 Andrea L. Brown

26 Attorneys for Plaintiffs  
27  
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Columns								
1	2	3	4	5	6	7	8	9
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Renewal	Renewal Certificate Date and Number	Date of Known Infringement

1.	TROUP LONDON MUSIC	ROUTE 66 (A/K/A GET YOUR KICKS ON ROUTE 66)	ROBERT WILLIAM TROUP, JR. (A/K/A BOBBY TROUP)	4/22/46	EP 3280	R. W. TROUP (ROBERT WILLIAM TROUP, JR.), AS, "THE AUTHOR".	8/20/73 R 557562	11/3/06
2.	WB MUSIC CORP.	AT LAST	MACK GORDON HARRY WARREN	7/2/42	EP 105826	TWENTIETH CENTURY MUSIC CORP, AS "PROPRIETOR IN A WORK MADE FOR HIRE"; HARRY WARREN, AS "AUTHOR".	7/2/69 R 464802	11/3/06
3.	DUBOSE & DOROTHY HEYWARD MEMORIAL FUND PUBLISHING, GEORGE GERSHWIN MUSIC AND IRA GERSHWIN MUSIC	SUMMERTIME	GEORGE GERSHWIN DU BOSE HEYWARD	9/28/35	EP 50655	IRA GERSHWIN, ARTHUR GERSHWIN AND FRANCES GERSHWIN GODOWSKY, AS "NEXT OF KIN OF THE DECEASED COMPOSER OF THE MUSIC (GEORGE GERSHWIN)"; JENNIFER HEYWARD, AS "THE CHILD OF THE DECEASED AUTHOR OF THE WORDS (DUBOSE HEYWARD)".	9/28/62 R 301749	11/3/06

SCHEDULE "A"

Columns	1	2	3	4	5	6	7	8	9
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Renewal	Renewal Certificate Date and Number	Date of Known Infringe- ment	

4.	EMI MILLS MUSIC, INC.	IT DON'T MEAN A THING (IF IT AIN'T GOT THAT SWING)	IRVING MILLS DUKE ELLINGTON	10/28/32	EP 33029	DUKE ELLINGTON, AS "AUTHOR".	10/28/59 R 244626	11/3/06	
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SCHEDULE "A"